

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 23-01138-mg

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6 In the Matter of:

7

8 CELSIUS NETWORK LLC,

9

10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED,

13 Plaintiff,

14 v.

15 STAKEHOUND SA,

16 Defendant.

17 - - - - - x

18

19 United States Bankruptcy Court

20 One Bowling Green

21 New York, NY 10004

22

23 September 19, 2023

24 3:00 PM

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1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: JONATHAN

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1 HEARING re Adversary proceeding: 23-01138-m Celsius Network  
2 Limited v. StakeHound SA  
3 Hybrid Hearing RE: Emergency Motion for Amendment of Order  
4 Granting TRO (the "Motion"). (Doc## 67, 68)

5  
6 HEARING re Adversary proceeding: 23-01138-mg Celsius Network  
7 Limited v. StakeHound S A  
8 Hybrid Hearing RE: Motion to Amend Emergency Motion Of  
9 StakeHound S A For Amendment Of Order  
10 Granting TRO. (Doc## 74, 75)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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15 BY: MARY STEPHANIE WICKOUSKI

16

17 ALSO PRESENT TELEPHONICALLY:

18 RICK ARCHER

19 JASMINE ARMAND

20 DEAN CHAPMAN

21 AARON COLODNY

22 SEAN ANDREW FEENER

23 UDAY GORREPATI

24 MIRA HAQQANI

25 TAYLOR HARRISON

1 SAMUEL P. HERSHEY  
2 JEFFREY S. KRAMER  
3 NICHOLAS LOMBARDI  
4 MASON PALISSERY  
5 GREGORY F. PESCE  
6 ELIZABETH SCOTT  
7 LUKE SPANGLER  
8 MICHAEL STANLEY  
9 VINCE SULLIVAN  
10 DAVID TURETSKY  
11 KEITH WOFFORD  
12 KAILA ZAHARIS  
13 TANZILA ZOMO  
14 PHILIP ABELSON

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1 P R O C E E D I N G S

2 CLERK: All right. Calling Celsius Network  
3 Limited v. StakeHound SA, Case Number 23-1138, the 3:00  
4 calendar. Ms. Wickouski, if you could please give your  
5 appearance.

6 MS. WICKOUSKI: Good afternoon, Ms. Anderson.  
7 Stephanie Wickouski, from Locke Lord, on behalf of  
8 StakeHound SA. And I'm here with my colleague Jeffrey  
9 Kramer, also from the firm of Locke Lord.

10 CLERK: Thank you so much. Do we have any  
11 additional counsel in the Courtroom?

12 MR. HURLEY: Yes. Good afternoon. Mitch Hurley  
13 with Akin Gump Strauss Hauer & Feld, special litigation  
14 counsel for Celsius.

15 CLERK: All right. Thank you.

16 MR. HURLEY: Thank you.

17 CLERK: All right. Are there any parties on Zoom  
18 that are speaking on the record this afternoon? If so,  
19 raise your hands using the Zoom function, raise hand  
20 function, and I will ask you to unmute and give your  
21 appearance. Okay. Recording.

22 For the parties that have joined, is there anyone  
23 else in the Courtroom that's going to be speaking on the  
24 record? Is there anyone else on Zoom that's going to be  
25 speaking on the record? Can we proceed with the hearing, or

1 are we waiting on anyone?

2 MR. HURLEY: Celsius is ready.

3 CLERK: Okay.

4 MS. WICKOUSKI: We're ready also.

5 CLERK: Okay. Thank you. I'll let the Judge  
6 know.

7 THE COURT: Please be seated. Just give me a  
8 moment. All right, why don't you first give me an update on  
9 where things stand? I guess, Ms. Wickouski, you want to go  
10 first.

11 MS. WICKOUSKI: Thank you, Your Honor. First of  
12 all, I want to thank the Court for allowing us and expedited  
13 hearing on our motion. In terms of update, we have not -- I  
14 think we're still in the same place with respect to our  
15 request for modification of the TRO, except for one thing,  
16 which is at the time we submitted our motion, we were not  
17 aware that the hearing on the 27th may be adjourned.

18 Once we saw that with Mr. Hurley's request on the  
19 docket, as Your Honor knows, we consented to the request.  
20 But we really did need to update our numbers because,  
21 assuming the Court allows the adjournment, that's going to  
22 be a somewhat longer period of time that we wanted to try to  
23 address.

24 I realized that -- well, we did file sources and  
25 uses early this afternoon. I apologize for the lateness of

1 this being filed. However, there's been a number of  
2 incomings, including Mr. Hurley's letter that he filed with  
3 the Court, the letter he sent to me on Friday, as well as  
4 the opposition filed this morning that stated that we hadn't  
5 been specific or our numbers weren't clear, or we didn't  
6 have enough detail.

7 And so I thought it was best for our client to  
8 present this in a format that most of us are used to seeing,  
9 which is sources and uses. There are a couple of things  
10 that are interesting about that. One is that I think it  
11 shows -- and this point has, I think, gotten lost in the  
12 translation -- that there is actually revenue being  
13 generated that has been generated that is on hand, as well  
14 as assets that are not in dispute, including primarily  
15 StakeHound' bank account.

16 And because the way we read the order as drafted,  
17 it was our belief that we were not allowed to touch any of  
18 that, only \$200,000 of the subject assets. So we proceeded  
19 under that assumption. But one of the things that we're  
20 asking is for clarification on that point. And if that was  
21 what was intended, we're asking the Court to modify it. And  
22 we've specifically presented why we need the money,  
23 specifically what's involved and the impact on the  
24 StakeHound assets.

25 And you know, one thing I would note is to



1 quantify this, this really doesn't have a noticeable effect  
2 on the StakeHound estate or recovery. Even if one were to  
3 assume that the Celsius -- even if one were to assume that  
4 Celsius wins on its claim, gets a judgment, and somehow has  
5 -- that results in \$1 million or half a million dollars less  
6 than what they would have recovered otherwise, that amount  
7 does not move the needle in this bankruptcy case. And  
8 that's demonstrated clearly by the numbers in their  
9 disclosure statement.

10 By my calculations -- and I'm no math genius here  
11 -- but that would result in one cent for every \$10,000.  
12 That's -- not only is that material, that's not even  
13 noticeable. And I think that the relative size of this  
14 expenditure does not wreak any irreparable harm on the  
15 Debtor, but to the extent there is any harm, it has to be  
16 balanced with the harm that StakeHound faces if its  
17 operations shut down. And you know --

18 THE COURT: You know, my answer to that is it may  
19 translate into pennies for the estate. But if you owe them  
20 \$100 million, it's \$100 million. That's a lot of money, to  
21 me. So I don't credit your analysis of why you say it's not  
22 material. It's a lot of money. Maybe you're right, maybe  
23 they're right, but it's a lot of money.

24 MS. WICKOUSKI: Well, I think that there's another  
25 factor here, which is the amount -- not only is the amount

1 that we are asking to be able to spend not material, even  
2 assuming the Debtor recovered it, but the amount is not  
3 likely to result in a diminution of the assets of  
4 StakeHound. It's likely to result in preservation and even  
5 enhancement of them.

6 And I appreciate that this is relief that we're  
7 asking that's discretionary with the Court. The Court has  
8 entered a TRO. We first of all want to know that we're  
9 reading it properly, but we also --

10 THE COURT: I have some question whether -- I'm  
11 going to have questions, first to Mr. Hurley. When I read  
12 his filing, which sort of sets out -- I'll hear from him  
13 first and then you'll have a chance to respond to it -- the  
14 amount that it appears that StakeHound has the amounts it's  
15 used paid since the voluntary freeze and since the TRO  
16 seemed rather staggering to me. It raised -- you know, I'm  
17 not jumping to any conclusions yet, but it raised some  
18 pretty serious questions to me.

19 MS. WICKOUSKI: I don't think that -- I don't  
20 think that that's accurate. I think that the amounts that  
21 were utilized were from the Debtor's bank account and not  
22 from the assets that we agreed to freeze. And I think --

23 THE COURT: Hang on a second, okay? The TRO, the  
24 operative part of the TRO, was the order entered on  
25 September 8th. In bold and all caps on page 12, "StakeHound

1 and all persons acting in concert with StakeHound are here  
2 are prohibited and preliminary enjoined from transferring  
3 any assets or property within StakeHound's possession,  
4 custody or control to any person or entity, pending the  
5 outcome of the preliminary injunction hearing." And it goes  
6 on from there.

7 You know, then the last sentence also in bold and  
8 all caps, "Notwithstanding the terms of the TRO StakeHound  
9 shall be permitted to spend \$200,000 in money or money's  
10 worth of the subject assets between now and the PI hearing."  
11 So \$200,000 from the subject assets. But the freeze was  
12 from transferring any assets or property within StakeHound's  
13 possession, custody, or control to any person or entity.  
14 Where you think it -- they were free to transfer money from  
15 their bank accounts?

16 MS. WICKOUSKI: No, that --

17 THE COURT: They're not.

18 MS. WICKOUSKI: That didn't -- that's correct.  
19 That did not occur since this TRO was entered. And this is  
20 demonstrated by our sources or uses. Only \$161,000 was  
21 utilized. StakeHound has not even utilized the full  
22 \$200,000. I believe what Mr. Hurley incorrectly refers to  
23 is the fact that while we were in a voluntary freeze, which  
24 Mr. Hurley negotiated --

25 THE COURT: Right. I have that stipulation and

1 that says in Paragraph 1 -- leave some language out --  
2 StakeHound will not sell or transfer or otherwise dispose of  
3 tokens, either ETH, DOT and MATIC, and associated rewards  
4 that are subject to this litigation -- that's the subject  
5 property -- subject to notice of opportunity.

6 MS. WICKOUSKI: That's correct.

7 THE COURT: It is correct that that language  
8 doesn't say anything about the bank accounts.

9 MS. WICKOUSKI: That is correct. And that is what  
10 we agreed to and that was abided by. There was, to my  
11 knowledge, I believe -- and don't have a witness here for  
12 this -- but around \$1 million in a bank account that was not  
13 -- you know, not related to this.

14 THE COURT: When you say not related to this, was  
15 not subject to the voluntary --

16 MS. WICKOUSKI: No, not subject to --

17 THE COURT: -- freeze that was in that  
18 stipulation?

19 MS. WICKOUSKI: That's correct. It was not  
20 tokens. It was not rewards.

21 THE COURT: Okay. And since the TRO, you're  
22 saying they've not -- other than the \$200,000 carveout,  
23 nothing else has been spent from any of the assets of  
24 StakeHound?

25 MS. WICKOUSKI: That's correct. That's correct.

1 And part of the -- I suppose that because there is a  
2 difference between what we agreed to in the voluntary freeze  
3 and what Celsius asked for in the TRO and the language of  
4 the TRO, I think it's fair to say we had a question in terms  
5 of whether the scope of this was intended, but we were not  
6 going to act without asking Your Honor.

7 THE COURT: My intention was all -- they were not  
8 to transfer any assets other than the 200 from any accounts.

9 MS. WICKOUSKI: Yes. Well, and that's what we  
10 did.

11 THE COURT: Other than the two -- I gave you the  
12 \$200,000 --

13 MS. WICKOUSKI: Yes.

14 THE COURT: -- carveout, which Celsius objected to  
15 a carveout, but I approved the carveout.

16 MS. WICKOUSKI: I understand, Your Honor, and  
17 that's what we had -- that's how we read it and that's what  
18 we have abided by. What we're asking today, and we wanted  
19 to illustrate this, that the -- and dollars don't have faces  
20 on them in the sense that what our client is concerned about  
21 is being able to pay their necessary bills, and they don't  
22 like to have to pick and choose between vendors to pay, and  
23 they're going to run out of money.

24 So, if the Court were inclined to grant the relief  
25 with respect to the bank account being used, or to raise the

1 carveout an incremental \$300,000, you know, we're not  
2 suggesting how the Court grants this relief. What we do  
3 want is an accommodation so we can get through to the next  
4 hearing.

5 THE COURT: Can I ask a couple of questions? So I  
6 think in what I read it alluded to the fact that there's a  
7 mediation plan? When is that?

8 MS. WICKOUSKI: Well, Your Honor, we did want to  
9 discuss that, because when I saw Mr. Hurley's letter asking  
10 for a continuance, I immediately consulted our client and  
11 obviously recommended to them that we agree, but also  
12 discussed with them the prospect that we use the additional  
13 time to pursue a mediation.

14 So, Mr. Hurley and I have not discussed that. I  
15 don't know what the Debtor's response to that is, but we're  
16 prepared to talk about that today.

17 THE COURT: So that hasn't been agreed to?

18 MS. WICKOUSKI: Hasn't. Has not been agreed to.  
19 It would be my hope that if the Debtor were agreeable and  
20 Your Honor allowed it, that we could go right away to  
21 discuss the selection of a mediator, who --

22 THE COURT: Let me raise a very practical problem,  
23 because I think Mr. Hurley, I think, in a letter had  
24 suggested adjourning it, I think until October 10th or 11th,  
25 or something like that.

1 MR. HURLEY: 11th, Your Honor.

2 THE COURT: It doesn't work. As you know, Mr.  
3 Hurley, the Celsius confirmation hearing starts on October  
4 2. It's not going on that week. That's because I'm out of  
5 town.

6 MS. WICKOUSKI: Mm hmm.

7 THE COURT: I'm not here. So, I will tell you  
8 all, in reviewing my calendar, it either goes forward on  
9 September 27th or Wednesday, October 25th.

10 MS. WICKOUSKI: I'm sorry, Your Honor, I didn't  
11 hear.

12 THE COURT: Wednesday, October 25th. So the  
13 Celsius confirmation hearing starts at 2:00 on the 2nd,  
14 Monday the 2nd. And we're off the week of the 9th because I  
15 was going to be away before this hearing was scheduled. And  
16 then we come back and we resume the confirmation. Whether  
17 it's going to take the whole time, I don't know. Okay?  
18 Those dates have been blocked on my calendar.

19 In order -- and I have, like, the whole month of  
20 November in trial. I can't, you know, hold off the rest of  
21 my calendar for two months. So we've been scheduling -- you  
22 just heard me schedule a hearing for noon during the  
23 confirmation because, you know, I've been scheduling  
24 hearings for 5:00. I can't schedule an evidentiary hearing  
25 for 5:00.

1 MS. WICKOUSKI: Mm hmm.

2 THE COURT: Okay. So realistically, as of now, I  
3 mean, it's possible the confirmation hearing will end  
4 sooner. But right now when I looked at my calendar earlier  
5 this morning, the first day -- I have matters on the 25th I  
6 could move -- would be Wednesday, October 25th. That's  
7 number one.

8 MS. WICKOUSKI: Understood. And Your Honor --  
9 just to be clear, I mean, we are ready to go forward next  
10 week.

11 THE COURT: So am I, or I will be. I'm not ready  
12 yet, but I will be.

13 MS. WICKOUSKI: I feel that it was -- when someone  
14 asks for a continuance, particularly when they're  
15 representing --

16 THE COURT: Well, they didn't just ask for a  
17 continuance. Let's be very clear about that. And if I have  
18 to address that now, I will. You know, Mr. Hurley has --  
19 you may -- I'm not saying that, you know, what he says is,  
20 you know, is the actual -- the facts or the Court would find  
21 that. But he certainly raised in his letter serious issues  
22 about discovery and, you know, you responded on that.

23 But let me say that if we go forward on the 27th  
24 and Mr. Hurley (indiscernible) on evidence of the failure of  
25 StakeHound reasonably to comply with discovery, I am going



1 to make adverse findings based on that. This hearing has  
2 been scheduled. You all knew it was on a very expedited  
3 basis. It puts quite seriously unreasonable burdens on you  
4 and me and your clients. That's what happens with a  
5 preliminary injunction.

6 But if in fact we go -- if we have the hearing on  
7 the 27th and Mr. Hurley establishes at least what he alleges  
8 about the absence of discovery, the importance of the  
9 discovery, I will make adverse findings against StakeHound.

10 MS. WICKOUSKI: I understand, Your Honor, and --

11 THE COURT: But that's --

12 MS. WICKOUSKI: -- I strongly disagree with the  
13 characterizations.

14 THE COURT: Okay. And I'm not --

15 MS. WICKOUSKI: And we -- my colleague, Jeffrey  
16 Kramer, who's been the point person on the discovery in  
17 charge of that, can speak to that very directly. It was  
18 completely miscast.

19 And I must say this, even though I realize it's a  
20 little bit of putting a pin in this and going on to the  
21 another issue, I did note that Mr. Hurley submitted his  
22 September 15th letter that was filed on Friday shortly  
23 before I filed this motion. But he neglected to include my  
24 response, which was sent the next day. And I think to the  
25 extent that the Court considers that letter in any respect,

1 I would ask for the opportunity for the Court to consider my  
2 response as well.

3 THE COURT: Let me make clear, I am not deciding  
4 anything on those letters. Okay? It raised a -- and I  
5 don't doubt that you'll have a response to it. The only  
6 point I'm making is that that if we go forward on the 27th  
7 and there's been a material deficiency in the discovery that  
8 reasonably was asked of StakeHound, I will make adverse  
9 findings based on it. I mean, the plaintiff is entitled to  
10 be able to prove his case. And to be able to do that, was  
11 entitled to discovery. Let me put that -- I don't want to  
12 go further on that issue now. I just --

13 MS. WICKOUSKI: Well --

14 THE COURT: -- this gets complicated, okay?  
15 Because --

16 MS. WICKOUSKI: I understand and I understand the  
17 --

18 THE COURT: You agree --

19 MS. WICKOUSKI: -- the importance of the  
20 exclusion.

21 THE COURT: You would agree to an adjournment?

22 MS. WICKOUSKI: Yeah.

23 THE COURT: I can't do a hearing on the date that  
24 Mister Hurley suggested. I'm not here.

25 MS. WICKOUSKI: Well, and Your Honor, we've

1 propounded discovery as well. I think our discovery is more  
2 relevant to the issues, more targeted, but I'm sure that  
3 Celsius --

4 THE COURT: Why am I not surprised you're saying  
5 that?

6 MS. WICKOUSKI: I'm sure Celsius would disagree,  
7 and I think we would intend to work all of these issues out  
8 with them. We're trying very hard. We're in the mode and  
9 have been for -- I mean, there are four associates who would  
10 strongly disagree with the suggestion that we weren't  
11 participating in discovery. They feel like they're  
12 participating a whole heck of a lot.

13 So it would not be -- I'm -- as you know, been  
14 practicing a long time and I've sought preclusion orders  
15 myself. So I take this whole discovery process very  
16 seriously, and I react when someone doesn't comply with  
17 discovery. We have no intention of being in that position  
18 because that's not who we are. And if Your Honor wants to  
19 hear more details --

20 THE COURT: Let me just -- I'm just curious what -  
21 - are you sending the associates to Switzerland --

22 MS. WICKOUSKI: No.

23 THE COURT: No, I mean, I'm not saying that to be  
24 flippant. There isn't -- look, I practiced law for 34 years  
25 before I became a judge, and you know, there are a whole

1 bunch of written opinions in the Southern District of New  
2 York on spoliation.

3 MS. WICKOUSKI: Mm hmm.

4 THE COURT: Lawyers' obligations have only gotten  
5 much more complicated, you know, particularly where you're  
6 dealing with foreign clients --

7 MS. WICKOUSKI: Mm hmm.

8 THE COURT: -- as you are here. You know, you and  
9 they are operating at their own risk. If you leave your  
10 client to decide what it -- I'll say it instead of the he --  
11 I know it talks about an individual -- what it believes is  
12 relevant and should be produced, or what searches are  
13 required to be made.

14 MS. WICKOUSKI: We didn't do that.

15 THE COURT: Clients don't get to do that.

16 MS. WICKOUSKI: We did not do that. And we have  
17 spent a lot of time with our client getting them to --  
18 explaining to them what was necessary and getting the whole  
19 universe --

20 THE COURT: They're aghast at what the discovery  
21 process in the United States is. You know --

22 MS. WICKOUSKI: Well, it's --

23 THE COURT: (indiscernible)

24 MS. WICKOUSKI: These are not lawyers.

25 THE COURT: I know.

1 MS. WICKOUSKI: They're tech people. This is the  
2 first time they've been through a U.S. legal process. But  
3 it's not correct to say that we are turning over documents  
4 that are only what our client culled out. We're going  
5 through the universe of documents. Hence, my point about my  
6 associates, who were working night and day on this.

7 And, you know, frankly, I think given the amount  
8 that needs to be done, I can't really quibble over the fact  
9 that both sides would probably benefit from more time. You  
10 know, I had originally seen this as a much more targeted  
11 dispute in terms of the arbitrability issue. It's not even  
12 immediately obvious to me why there would need to be any  
13 discovery. Yet, that has been pursued and we're responding  
14 to it fully.

15 But I really question why that's being done when  
16 it's not really obvious why it's necessary to decide the  
17 pending motions. But still, withstanding that --

18 THE COURT: Well, let me just ask you a question--

19 MS. WICKOUSKI: -- a request is a request.

20 THE COURT: -- because -- so, am I correct that  
21 you've withdrawn the motion to dismiss?

22 MS. WICKOUSKI: Yes. Yes, Your Honor. We have --  
23 we withdrew that last week.

24 THE COURT: Right.

25 MS. WICKOUSKI: And --

1 THE COURT: And so, what I'm faced with for the  
2 27th or whenever it's rescheduled for, is the motion for  
3 preliminary injunction and your motion to compel  
4 arbitration?

5 MS. WICKOUSKI: Yes, Your Honor.

6 THE COURT: Okay. Well, let me -- because I think  
7 it's relevant to the scheduling issue, let me ask, Mr.  
8 Hurley, what is Celsius' view about mediation?

9 MR. HURLEY: May I have the podium, Your Honor?

10 THE COURT: Yeah, please.

11 MR. HURLEY: Thank you, Your Honor. Mitch Hurley,  
12 with Akin Gump, special litigation counsel to Celsius, for  
13 the record.

14 THE COURT: Do you want to introduce your  
15 colleagues too?

16 MR. HURLEY: Absolutely. My partner, Dean  
17 Chapman, and my colleague Nick Lombardi, who I believe is  
18 familiar to this Court.

19 THE COURT: Well, that's -- the reason I ask you  
20 to do that is because I always make a disclosure any time  
21 one of my former law clerks appears before me. Mr. Lombardi  
22 is one of my former law clerks. How many years ago,  
23 Nicholas?

24 MR. LOMBARDI: Six years, Your Honor. Six years.

25 THE COURT: Good to see you. But I always --

1 whenever one of my former law clerks is appearing before me,  
2 I want to make sure that that's on the record. Okay. Go  
3 ahead, Mr. Hurley.

4 MR. HURLEY: Okay. So, Your Honor, let me say  
5 with respect to mediation, first of all, that as I think the  
6 Court is aware, Celsius has been keen from the very  
7 beginning to try to get settlement discussions going, with a  
8 lot in the record about that going all the way back to  
9 April.

10 We were in this Courtroom on September 7th. You  
11 looked us both in the eyes and said, see if you can settle--

12 THE COURT: Well, we're here today. But what --  
13 let's put aside --

14 MR. HURLEY: Okay. Fair enough.

15 THE COURT: -- what past history is and let's talk  
16 about today.

17 MR. HURLEY: We're only trying to make the point  
18 that Celsius has been keen on that from the beginning and  
19 remains so. With respect to mediation itself, it can be  
20 very effective. It can also result in delays. It can be  
21 expensive. It can slow things down.

22 So from our perspective, while we think mediation  
23 makes sense, especially if we get the right mediator for it,  
24 it would be very important from our perspective for it to  
25 continue alongside the other proceedings in parallel,

1 especially discovery. And I have to address very briefly  
2 some stuff on discovery. We obviously did send a letter  
3 asking for a conference on this, so I think it's fair for me  
4 to do a bit on it. I won't belabor it.

5 So first of all, you just heard Ms. Wickouski say  
6 she disregards -- that she doesn't agree with any of my  
7 characterizations. Okay. There's some facts she can't  
8 deny. We served our discovery on September 4th. We have  
9 not gotten one page. Okay. She says in her letter to you  
10 yesterday, this is in Paragraph 2, the last sentence.

11 THE COURT: Look --

12 MR. HURLEY: I just -- I --

13 THE COURT: Let me stop you, because I read the  
14 letter. I read --

15 MR. HURLEY: Okay.

16 THE COURT: -- her letter. I meant, read Ms.  
17 Wickouski's letter. I understand and I -- if I have to  
18 resolve discovery disputes, I have a procedure for doing  
19 that. That's not right at this moment.

20 MR. HURLEY: I understand. This point though,  
21 Your Honor, I think is critical to the scheduling question  
22 and whether or not it's realistic to go forward on the 27th.

23 THE COURT: That's why I started by saying that if  
24 we have -- if we go forward on the 27th, I'm going to permit  
25 you to put on, you know, under oath proof with regard to



1 discovery. And if I find material inadequacy, failure to  
2 provide the discovery, I'm going to make adverse findings  
3 for the preliminary injunction.

4 I'm not saying that as a threat. I'm just, it's  
5 just a fact. But I don't consider, with all due respect, I  
6 don't consider the letters from either of you as proof of  
7 it. Okay. I don't want -- I'm not delving into the details  
8 of, you know, what was done, what was not done, whether a  
9 single page was produced or not produced and why and all of  
10 that now. Okay. But I'm just -- I raised the issues  
11 because, one, the adjournment raises real scheduling issues  
12 for me.

13 Okay, and I -- when I told you that the first date  
14 that I could do an adjourned injunction hearing is October  
15 25th, that's just the reality of it. You'll either -- when  
16 I say you, I'm talking about both of you and your clients --  
17 will agree to mediation, which has to happen promptly.  
18 Let's put it this way. If we adjourn the hearing to October  
19 25th, I'm not staying discovery. We will push forward and  
20 if, you know what I hope would happen -- let's assume Ms.  
21 Wickouski, that you're successful in your motion to compel  
22 arbitration.

23 You're then, your client is looking at -- because  
24 I assume if Celsius is compelled to arbitrate, they will  
25 aggressively and it's going to be expensive for both sides.

1 Okay, and it's going to take time. I don't know what an --  
2 got a single arbitrator as of now? I mean, it's possible  
3 that the result is that I order arbitration but -- or that  
4 you vacate the arbitration that was demanded and you start  
5 over again because it violated the automatic stay and all  
6 that.

7 But let's assume the arbitration goes forward. It  
8 isn't going to happen instantly and there's going to be  
9 expense. And I -- and the time I issued the TRO, I know I  
10 said at that point -- and I'm not ruling on this, but  
11 there's certainly the possibility that what the Court does  
12 is issue a preliminary injunction until the arbitrator has a  
13 chance to rule on precautionary measures. And I've had that  
14 happen in cases before and in fact, they read -- you know,  
15 it's not a crypto case like this.

16 It's not, you know, not the same issues, but yes,  
17 that's what -- arbitrators do that. Okay. And you can  
18 disagree, but, you know, I think Mr. Hurley made a  
19 substantial showing that they were entitled to the relief  
20 and they'll make that, you know, they'll certainly attempt  
21 to make that showing before the arbitrator or not. So --  
22 but from the standpoint of Celsius, I'm not sure where this  
23 whole process gets you.

24 You know, Mr. Hurley, I think the first time you  
25 appeared in Celsius before me was in a prior adversary

1 proceeding and we know what happened there when the  
2 counterparty filed for bankruptcy. You know, every time I  
3 read something about StakeHound's financial position, press  
4 as hard as you want and it may wind up with an insolvency  
5 proceeding in Switzerland. So it seems to me the stakes are  
6 high for both sides.

7 And what would make good sense to me is not  
8 stopping the litigation but make good sense to you, that you  
9 and your clients promptly agree on a mediator and try and  
10 resolve this whole dispute because it's either before me or  
11 before an arbitrator. It's going to go on for months at  
12 great expense to everybody. I don't think that's in either  
13 side's interest here.

14 Let me just say this as well and then you may well  
15 disagree with this Mr. Hurley, but I think you and your  
16 client need to agree on a sufficient, I'll call it a  
17 lifeline to keep StakeHound going until operating, not  
18 filing for insolvency, until we get to a preliminary  
19 injunction hearing or you get to a settlement. You know, it  
20 may be Celsius' view that StakeHound and StakeHound alone is  
21 responsible to Celsius for whatever loss occurred because of  
22 Fireblocks.

23 But you know, and you may not want to see counsel  
24 paid for pursuing their claim in Israel on it. But you  
25 know, it just strikes me that a disposition, a settlement in

1 this case may include either assignment of the claims or  
2 assignment of the recovery in that, you know, the amount of  
3 the claim that you believe Celsius has vastly exceeds  
4 StakeHound's assets and it clearly is in Celsius' best  
5 interest for StakeHound to recover in the proceeding in  
6 Israel. It isn't going to happen for free.

7 So all I can do is decide the matters that are  
8 before me. Okay, and if you all want to go ahead on the  
9 27th, you'll go ahead on the 27th and you'll add to what  
10 evidence you were going to put on to deal with the  
11 inadequacies of StakeHound's responses to discovery and  
12 whatever. And we'll do -- we'll have a hearing and I'll  
13 rule, okay. Not necessarily from the bench, but I'll rule.  
14 I don't let things linger.

15 But I'm not sure where that's going to get you at  
16 the end of the day, okay, so, okay, you get a preliminary  
17 injunction and I will probably not rule from the bench, but  
18 I've got -- you know, I thought that StakeHound's argument  
19 for arbitration because I've dealt with arbitration a lot,  
20 these issues recently -- I'm not saying they're going to  
21 win, but I'm not saying they're going to lose either. And  
22 one way or the other, where that's going to leave Celsius is  
23 litigating here, litigating in Switzerland for potentially a  
24 long time.

25 Sure, you can settle somewhere down the road, but

1 to me, it just makes a lot more sense to put all of your  
2 effort immediately into trying to get this resolved and I  
3 think, you know, your -- Celsius position, I'm not saying  
4 it's unreasonable but not a penny for lawyers, for their  
5 lawyers. I don't know what the actual status of the matter  
6 in Israel is and everything. But frankly, I think it's in  
7 Celsius' interest that matter go as quickly as possible as -  
8 - with as strong a showing as possible and so that -- how  
9 much -- Ms. Wickouski, how much was lost in -- by losing the  
10 private key?

11 MR. HURLEY: The ETH that we provided was about  
12 35,000 and there were rewards. I think it was in the 38,000  
13 ETH range. Very valuable.

14 THE COURT: That --

15 MR. HURLEY: Very valuable.

16 THE COURT: -- translated into dollars?

17 MR. HURLEY: Changes every day, but 70 million  
18 recently.

19 THE COURT: All right. Ms. Wickouski, go ahead.  
20 You want to say something?

21 MS. WICKOUSKI: Can we -- there is also a loss of  
22 business claim that StakeHound has against Fireblocks  
23 because StakeHound, I think this was actually in  
24 (indiscernible) declaration, was the original developer of  
25 this liquid staking model and technology and they were very

1 positioned to be a major player in this business, but this  
2 cast such a pall on their business and their opportunities,  
3 there is a substantial claim there and I think that that  
4 claim --

5 THE COURT: Okay --

6 MS. WICKOUSKI: What I'm --

7 THE COURT: I'm sure Celsius evaluates --

8 MS. WICKOUSKI: Well --

9 THE COURT: Has considered it and evaluated as  
10 well.

11 MS. WICKOUSKI: And we have --

12 THE COURT: Let --

13 MS. WICKOUSKI: We have experts that would be  
14 recognized even by our opposing counsel and our adversary as  
15 being competent in the field to assess damages. We didn't  
16 want to disclose who they are, but we can do that. And my  
17 point being that this isn't just something written on a gum  
18 wrapper. This is a real asset that could (indiscernible) to  
19 the benefit of my client and Mr. Hurley's client and it's  
20 something that I think really warrants a discussion in the  
21 mediation process, but we have to have some ability to get  
22 from here to there. I think that the -- obviously it's in -  
23 - it's up to the Court's schedule as to when a continuance  
24 would be, we'll react --

25 THE COURT: I'm -- that I made clear. It's either

1 the September 27th or October 25th. One or the other. I  
2 mean, I can go further than -- actually, I can't because  
3 November, I've got this long trial.

4 MS. WICKOUSKI: And we have not -- and I was  
5 careful in my letter and I'll reiterate it again. We are  
6 not conditioning our consent to a continuance on the Court's  
7 granting us a carveout or with Mr. Hurley's client granting  
8 us a carveout. However, this is -- puts us in a very  
9 difficult position and we would ask for some good faith  
10 accommodation either by the plaintiff or consideration by  
11 Your Honor.

12 THE COURT: Well, let me say this. I think on the  
13 motion that's before me today, which I agreed to hear on  
14 very short notice, Celsius has the much better part of the  
15 argument. This is essentially a motion for reconsideration  
16 and as a motion for consideration, it's a loser. Everything  
17 that you're arguing in the motion about the economics could  
18 have been made right at the time of the TRO hearing.

19 And -- but I wasn't deaf to what you were arguing  
20 either. I mean, I did approve the \$200,000 carveout because  
21 I thought it would at least allow -- maybe it wouldn't allow  
22 them to pay you and the other lawyers, but it would allow  
23 them to pay the other necessary expenses to keep their site  
24 operating, okay. That was my intention. And as I look at  
25 the numbers in the papers you've submitted now, it did. It

1 did exactly that.

2 MR. HURLEY: It didn't. What they submitted today  
3 shows that of the \$200,000, \$140,000 -- \$100,000 went to  
4 Locke Lord, \$40,000 went to this British law firm that's  
5 also working with them on this and \$40,000 went to the  
6 staking costs.

7 THE COURT: All right.

8 MR. HURLEY: That's how they spent it. That's why  
9 they're saying there's a crisis, Your Honor, because the  
10 \$200,000 that you unlocked for them, they didn't use  
11 business expenses. They used most of it to pay lawyers and  
12 not even the lawyers working on the Israeli --

13 THE COURT: Here's what we're going to do.

14 MS. WICKOUSKI: (indiscernible).

15 THE COURT: Wait, wait. Stop. Stop. Either the  
16 two of you alone or with your troops are going to go out in  
17 the hall and you're going to see if you can come to some  
18 agreement. You know, I would say this, Mr. Hurley. I  
19 talked about the necessity for a lifeline to keep StakeHound  
20 operating. Its lawyers are not going to work for nothing  
21 for very long. Okay. You may poo-poo whether paying of  
22 legal fees -- if it was the -- if the tables were turned,  
23 you'd have a different view of it. Okay.

24 Just because of my schedule, I can't hear this  
25 until October 25th. That would give you a sufficient runway



1 to really seriously see if you can settle this and at the  
2 same time move forward with discovery. Okay. I think --  
3 I'm not -- Ms. Wickowski, I'm not suggesting that you and  
4 your colleagues have not been diligent about what you're  
5 doing, but -- and I'm not -- I don't want to dive into the  
6 weeds about it today, okay.

7 But the notion, if correct -- and I'm not basing  
8 on this, that not a single page has been produced yet, we've  
9 got a hearing -- we've got an injunction hearing, witnesses  
10 coming up. Okay. It seems to me that your client needs to  
11 understand what the potential consequences are. I -- look,  
12 I'm not saying -- I'll rule on your motion to compel  
13 arbitration and -- but I think it's in both sides' best  
14 interest to really seriously now try and settle this matter.

15 And I think whether the litigation in Israel is  
16 worth everything you think it's worth or not, I'm sure, you  
17 know, lots of people are going to disagree with that, but  
18 any resolution is going to have to -- it was Celsius' coins  
19 that disappeared. So any resolution, it seems to me, has to  
20 include how you deal with that, who gets that potential  
21 claim or how it gets handled. And there may be other things  
22 as well. I mean, it does -- StakeHound does continue to  
23 have assets besides that. What I want you to do is let's  
24 take a recess until four o'clock.

25 MR. HURLEY: Your Honor, may I just very briefly

1 and very directly --

2 THE COURT: Sure.

3 MR. HURLEY: -- respond to a couple of points?

4 Okay. First, regarding settlement, we agree a hundred  
5 percent. We're always eager to find a settlement that makes  
6 sense. We're willing to do that. On mediation, provided  
7 again that we proceed in parallel so everybody still is kind  
8 of has the heat on them, I think that's usually helpful in  
9 mediation, frankly. We're in favor of mediation.

10 In terms of the Israel litigation, anything in our  
11 submissions or statements that have been interpreted as us  
12 saying the claims aren't good, that certainly wasn't our  
13 intention because we don't --

14 THE COURT: I didn't even read it that way because  
15 that's the last thing you want to do.

16 MR. HURLEY: I just want to make it clear for the  
17 record in case --

18 THE COURT: I understand.

19 MR. HURLEY: -- anybody ever points to this to the  
20 future. We're not saying that. What we're saying is we  
21 don't have enough information to conclude one way or the  
22 other what the merits are. So we are -- and in terms of  
23 carve outs, we've said from the very beginning, if there's a  
24 fee to keep the notes that coin staked, of course. Good.  
25 If we understand how you want to spend money in Israel,

1       okay. We'll listen, but we need to have information.

2               THE COURT: Look, I --

3               MR. HURLEY: That's really been our --

4               THE COURT: I'm not disputing any of what you just  
5       told me. Okay.

6               MR. HURLEY: And then just the last thing because  
7       I know you don't want to hear about this. I'm only going to  
8       say this on discovery. My concern, Your Honor, is the ship  
9       already has sailed. Like where we are now, it'd literally  
10      be impossible for September --

11              THE COURT: You might be very happy going forward  
12      --

13              MR. HURLEY: Okay. I just want to make it clear  
14      for the record. That's why we sent the letter.

15              THE COURT: If what you're telling me -- and I  
16      have no reason to doubt you -- but it's also not evidence.  
17      Okay. It might be the best position, but I don't know where  
18      it gets you. All it gets you is a preliminary injunction.  
19      I mean, it's -- you know.

20              MR. HURLEY: Understood. That's all I wanted put  
21      on the record, Your Honor. With that --

22              THE COURT: It's not -- it's not going to put  
23      money in Celsius' pockets. It's -- okay.

24              MR. HURLEY: Understood.

25              THE COURT: You've got a TRO and you'd come out

1 with it with the preliminary injunction. But Ms. Wickouski  
2 may come out of it with a motion to compel arbitration.  
3 Okay? I guess the arbitration's in English. Maybe you'll  
4 get to do that anyway, but --

5 MR. HURLEY: It is supposed to be in English.  
6 Okay, so Your Honor, that's really all I wanted to put on  
7 and we're happy to discuss --

8 THE COURT: Why don't you --

9 MR. HURLEY: -- if you like.

10 THE COURT: Here's, to me, what you've got. Try  
11 to come to an agreement. And you may have to check with  
12 your clients about it, but go out there and, one, see  
13 whether you can to agree to move the hearing to October 25th  
14 subject -- and if you're not going to agree to mediate  
15 quickly, it doesn't make any sense to move the hearing.  
16 We'll just go ahead. Okay?

17 And Mr. Hurley, if he believes all the bad things  
18 that he has to say, he'll prove it. Okay? But it does seem  
19 to me, Mr. Hurley, you've got to come to some agreement.  
20 I'll call it the lifeline. But the last thing, quite  
21 honestly, that I think Celsius wants is to force them into  
22 insolvency in a foreign country. And you should know from  
23 experience in Celsius, that that's a real risk.

24 MR. HURLEY: Understood.

25 THE COURT: Okay. So let's resume at four

1 o'clock, okay? If you need more time, let me -- knock on  
2 the door, chambers doors and -- okay. Are you taking your  
3 team? I want them to say hello to Mr. Lombardi.

4 MR. HURLEY: We'll leave Mr. Lombardi behind.

5 THE COURT: Yeah, let him -- four o'clock.

6 (Recess)

7 THE COURT: All right. We're back on the record  
8 in Celsius Network Limited v. StakeHound SA, Adversary  
9 Proceeding 23-01138. What do you have to report?

10 MR. HURLEY: Your Honor, for the record, Mitch  
11 Hurley of Akin Gump on behalf of Celsius. So what we'd like  
12 to ask Your Honor is if you could provide a control date in  
13 two days for this motion. The parties want to have some  
14 time to share some information and see if they can come up  
15 with a proposal that would obviate the need to decide the  
16 motion.

17 THE COURT: This motion being Ms. Wickouski's --

18 MR. HURLEY: Correct.

19 THE COURT: -- amend to the TRO.

20 MR. HURLEY: Exactly. If the parties can agree,  
21 great. We'll submit, presumably, some kind of joint  
22 stipulation. If we can't, then we would need the Court to  
23 decide the motion. Hopefully we can avoid that. The issue  
24 involves time differences, obviously with clients in  
25 different places, and there's some information that would

1 be, I think really helpful for us to understand, to try and  
2 reach an agreement.

3 THE COURT: What time of the day would you like to  
4 do that? So you're talking about Thursday?

5 MR. HURLEY: Yes. I think probably because of  
6 those time changes, probably a little later in the day makes  
7 sense. Would you agree, Ms. Wickouski, since your clients  
8 are in --

9 MS. WICKOUSKI: Yeah --

10 MR. HURLEY: -- Switzerland?

11 MS. WICKOUSKI: I think that gives us the  
12 opportunity to at least have the morning to talk to them.

13 THE COURT: I had trouble getting this computer  
14 working. Let me just step inside and -- or maybe  
15 (indiscernible) copy of the calendar. Hold on. Give me a  
16 minute. I'll be right -- don't get up when I come back.

17 So does Thursday -- back on the record. Does  
18 Thursday at four o'clock work? We can do it by Zoom. We  
19 don't -- you don't have to come down here.

20 MS. WICKOUSKI: Yes, Your Honor, that's fine for  
21 me, either in person or Zoom.

22 THE COURT: Mr. Hurley?

23 MR. HURLEY: Yes, Your Honor. Four o'clock  
24 Thursday works.

25 THE COURT: You know, if there's -- Thursday

1 afternoon, I have a Circuit IT Committee meeting from 12:30  
2 to 2:30. After that I'm free, so if you wanted a different  
3 time, Thursday afternoon, I don't have any hearing scheduled  
4 in the afternoon after the IT Committee.

5 MR. HURLEY: Whatever is convenient in that time  
6 period for Your Honor. I could do anything.

7 MS. WICKOUSKI: Yes, that --

8 THE COURT: Okay. So four o'clock Thursday, we'll  
9 do it by Zoom so you don't have to come down here. Okay?

10 MR. HURLEY: Yes.

11 THE COURT: All right. Anything else we need to  
12 deal with today?

13 MR. HURLEY: Not from our perspective, Your Honor.

14 MS. WICKOUSKI: No, Your Honor.

15 THE COURT: Do you have any objections of Mr.  
16 Lombardi stepping into chambers for a few minutes?

17 MS. WICKOUSKI: No.

18 THE COURT: I promise not to talk about the case.  
19 Okay. All right, we're adjourned. Thank you very much.

20 MR. HURLEY: Thank you.

21 (Whereupon these proceedings were concluded at  
22 4:30 PM)

23

24

25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: September 21, 2023



[& - ahead]

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